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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,122	11/25/2003	Toshio Tsujimoto	245926US0XDIV	4386
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
SONG, MATTHEW J				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
01/05/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/720,122

Applicant(s)

TSUJIMOTO ET AL.

Examiner

MATTHEW J. SONG

Art Unit

1792

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 14-16, 18, 19, 21, 22, 24 and 26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael Komakov/
Supervisory Patent Examiner, Art Unit 1792

/Matthew Song/
Examiner

Continuation of 3. NOTE: The amendment raises new issues as to the dependant claims because the combination of limitations was not considered previously, thus would require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 12/11/2008 have been fully considered but they are not persuasive.

Applicant argument that there are advantages to the sol gel method which are not obtained by the process taught by Watanabe and Hansen is noted but not found persuasive. Applicant alleges that the uniformity of concentration is not taught by the prior art. The Examiner admits that the prior art does not explicitly teach the concentration is uniform however it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the combination of Hansen and Watanabe to obtain a uniform concentration. Applicant also alleges that the silica sol strength is such that the promoter does not dissolve in the silicon melt. There is no support for this alleged feature in applicant's original disclosure. Applicant also alleges the formation of an uniform cristobalite layer. This argument is not persuasive because the claims do not require the formation of cristobalite layer and the formation of uniform cristobalite layer is expected since a uniformly dispersed crystallization promoter would have been obvious, as discussed previously.

Applicant's argument that the combination of Hansen and Watanabe produces microscopic nonuniformity and uniform, strong layer is not formed is noted but not found persuasive. This is mere attorney argument which lacks evidence; therefore is not found persuasive. Applicant merely alleges that the prior art produces microscopic nonuniformity without providing any evidence to support the argument. Also, the original disclosure merely discusses uniformity and does not teach that the instantly claimed method produces microscopic uniformity, thus the arguments are discussing features which are not supported by the original disclosure.

Applicant's argument that there is no suggestion to prepare the crystallization promoter containing layer in a sol gel process is noted but not found persuasive. The patentability determination of a product-by-process claim is based on the patentability of the product and does not depend on its method of production (MPEP 2113). The product would have been obvious for the reason discussed in the rejection.

Applicant's argument that Watanabe and Hansen cannot be combined is noted but not found persuasive. Hansen teaches a crucible surface can be coated by any method that deposits a devitrification promoter to the surface (col 7, ln 35-45); therefore Hansen is not limited to any particular method of forming a promoter layer. Watanabe et al teaches a method of forming a promoter layer by dispersing a promoter in a silicon oxide powder such that the promoter can be fused to the base body (col 3, ln 25-40; col 4, ln 15-30 and col 5, ln 5-30). Watanabe et al is not relied upon as a teaching to improve the inner surface of a crucible. Watanabe et al is merely relied upon to teach an known method of forming a promoter layer. Watanabe et al's method of forming the promoter layer does not require forming the additional silicon layer.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a thin layer less than 1 micrometer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments regarding the declaration is noted but not found persuasive. The declaration is also outside the scope of the claimed invention because the declaration alleges unexpected results for thicknesses of the layers, however the claims do not recite any thickness limitation..